

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 08-4082**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DONZELL W. BIGGS,

Defendant - Appellant.

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Appeal from the United States District Court for the Northern District of West Virginia, at Clarksburg. Irene M. Keeley, Chief District Judge. (2:06-cr-00025-IMK-JSK-1)

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Submitted: August 8, 2008

Decided: August 29, 2008

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Before WILKINSON, NIEMEYER, and KING, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Brendan S. Leary, Assistant Federal Public Defender, Wheeling, West Virginia, for Appellant. Sharon L. Potter, United States Attorney, David E. Godwin, Assistant United States Attorney, Clarksburg, West Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Donzell W. Biggs entered a conditional guilty plea, pursuant to a plea agreement, to one count of assaulting a federal employee with a dangerous weapon, in violation of 18 U.S.C. § 111 (a), (b) (2000). Biggs agreed to plead guilty after the district court granted the Government's motion in limine that sought to preclude Biggs from asserting at trial the defenses of necessity, justification, or self-defense. At sentencing, the district court denied Biggs' request for a downward departure and sentenced him to eighty months of imprisonment, three years of supervised release, and a \$100 special assessment. Biggs timely appealed. We affirm.

On appeal, Biggs argues that the district court erred in granting the Government's motion in limine because the facts supported the affirmative defenses of necessity, justification, or self-defense. A trial court's refusal to allow an affirmative defense raises a question of law, reviewable de novo. See United States v. Perrin, 45 F.3d 869, 871 (4th Cir. 1995). This court has also held that if "an affirmative defense consists of several elements and testimony supporting one element is insufficient to sustain it even if believed, the trial court and jury need not be burdened with testimony supporting other elements of the defense." United States v. Sarno, 24 F.3d 618, 621 (4th Cir. 1994). Our review of the record convinces us that the district court correctly

concluded that the evidence was insufficient to allow Biggs to assert the requested defenses at trial.

Accordingly, we affirm Biggs' conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED